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Supreme Court, U.S.
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NO. 91-2055

IN THE
SUPREME COURT OF THE UNITED STATES
October Term

DOUGLAS DWIGHT BENNETT
Petitioner,

V.

THE STATE OF MICHIGAN
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Douglas Dwight Bennett
In Pro-se
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-QUESTIONS PRESENTED

I IS MCL 570.152; MSA 26.332 STATUTE UNCONSTITUTIONAL IN VIOLATION OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

II DID THE PROSECUTING ATTORNEY VIOLATE THE DEFENDANT'S 14TH AMENDMENT RIGHTS WHEN CHARGING THE DEFENDANT WITH VIOLATING MCL 339.601, 339.2411; MSA 18.425(601) 18.425 (2411)?

III DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR BY NOT GRANTING THE DEFENDANT'S OBJECTION TO PROSECUTOR'S ENTRY OF EXHIBITS AT TRIAL?

IV DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR BY NOT GRANTING DEFENDANT'S MOTION AT-LAW FOR A DIRECTED VERDICT FOR ACQUITTAL?

V DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY NOT ADEQUATELY INSTRUCTING THE JURY CONCERNING THE APPLICABLE LAW?

VI DID THE TRIAL COURT INFLICT A HARSH AND CRUEL PUNISHMENT WHEN THE DEFENDANT WAS SENTENCED?

VII DID THE DEFENDANT DOUGLAS DWIGHT BENNETT RECEIVE A FAIR TRIAL?

PARTIES TO THE PROCEEDING

Petitioner, Douglas Dwight Bennett, 31093 Lakeview Blvd. #4211, Wixom, Michigan, 48393, without counsel as pro-se. Respondent, Oakland County Prosecuting Attorney, Richard Thompson, 1200 North Telegraph Rd., Pontiac, Michigan, appearing on behalf of the State of Michigan.

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1992

DOUGLAS DWIGHT BENNETT,
Petitioner

versus

THE STATE OF MICHIGAN
Respondent.

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Douglas Dwight Bennett, respectfully prays that a writ of certiorari to review the judgement of the opinion of the Michigan Court of Appeals. The opinion is setforth in the attached appendix marked (A).

JURISDICTION

The judgement of the Supreme Court of Michigan was that the court denied leave to appeal, January 30, 1992. The judgement of the Michigan Court of Appeals affirmed the decision of the Sixth Circuit for the County of Oakland, State of Michigan, May 30, 1992. The jurisdiction of the court is invoked under Title 28 USC, §1257(3).

STATUTES INVOLVED

Constitution of the United States Article I §10, clause 1.

Impairment of Contract;

"Impairment of contract," in order to come within this clause, not only must the obligation of a contract have been impaired, but it must have been impaired by a law of the state.

STATUTES INVOLVED

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Impairment of Contract;

"Impairment of contract," in order to come within this clause, not only must the obligation of a contract have been impaired, but it must have been impaired by a law of the state.

STATUTE INVOLVED

Constitution of the United States IV Amendment

The right of the People to be secure in their persons, homes, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issued, but upon probably cause, supported by oath or affirmation, and particularly, describing the place to be searched, and the persons or things to be seized.

STATUTE INVOLVED

Constitution of the United States V Amendment;

No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentation indictment of a grand jury, expect in service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a against himself, nor be deprived of life, liberty or property without due process, nor shall private property be taken for public use without just compensation.

STATUTE INVOLVED

Constitution of the United States VI Amendment;

Jury trial for crimes
and procedural rights

"Trial guarantees" that have been applied to the "pre-trial" stages of the criminal process are similarly designed to protect the fairness of the trial itself, Schneckloth v bustamonte, 412 U.S. 218; 36 L.ed.2d 854.

STATUTE INVOLVED

Constitution of the United States VIII Amendment;

Excessive bail, fines, punishments

Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted.

Primary purpose of cruel and unusual punishment clause of this amendment is directed at method or kind of punishment imposed for violation of criminal statutes, nature of conduct made criminal is

ordinarily relevant only to fitness of punishment imposed, Powell v. State of Texas, 392 US 651; 29 L.Ed. 2d.

STATEMENT OF THE CASE

This case now before this Court is the result of the People of the State of Michigan charging Douglas Dwight Bennett, your Petitioner, with three criminal statute violations.

The first charge was Fraudulent Detention or use of the Building Contract Trust Fund, MCL 570.152; MSA 26.332.

The second charge was false pretenses over $100.00, MCL 750.218, cl. 1970 as amended; MSA 28.415.

The third charge was being an unlicensed contractor 339.6013.

The warrant was signed by Margaret Schaeffer, 47th District Court for the State of Michigan, and the warrant was dated May 8, 1986.

That on the 29th of May, Bennett was arraigned before the Honorable Margaret Schaeffer. Bennett stood mute, and

acquiesce quasi jurisdiction of the Court, and appeared without counsel.

That on the , Bennett appeared before the Court, and when he was asked about the issues pending before the Court, his reply was "I will stand on my Constitutional Right." The Supreme Court ruled in Warth v Seldin, 422 US 490; 95 S.ct. 219, to invoke the jurisdiction of the Court the citizen must raise the constitutional issues within the first forum. The Court was so angered that Bennett was ejected from the Court, and was ordered to appear with an attorney or the Court was going to appoint one. This act by the judge would allow the Court jurisdiction over the person; under MCA Title 5, §22-29. Fearful that the Court may take additional actions, Bennett stood guilty before the court.

That on the 4th of June, Bennett appeared before the Court with an attorney. Bennett waived his right on the twelve day rule for pre-exam and the case was adjourned.

That on October 6th, Bennett appeared for the second pre-conference. That after the prosecution and the defense attorney for Bennett presented their arguments before the court, the Judge retired to chambers to decide the issues.

Court reconvened and the judge ruled that there was proof that at least $4,000 should be returned to the Faulkners. The second charge of False Pretense was dropped and the third charge of being an unlicensed contractor wold be bound over by pendant jurisdiction and Bennett was bound over to circuit court for trial.

That on June 20, 1989, Bennett appeared for trial continued through the 29th of June, 1989. The jury found Douglas Bennett "guilty", and on July 27, 1989, Douglas Bennett was sentenced.

That on the 1st of August, 1989, Douglas Bennett appealed to the Michigan Court of Appeals.

That on May 30, 1991, the Michigan Court of Appeals affirmed the ruling of the Circuit Court. (Appendix A) The Defendant Douglas Dwight Bennett appealed to the Supreme Court of Michigan, and on January 30, 1991, the Supreme Court of Michigan denied leave.

Reasons for hearing this case

Is to protect this natural-born citizen's constitutional rights. The first issue is the challenge to the constitutionality of MCL 570.151; MSA 26.331 Fraudulent Detention or use of Building Contract Trust Fund. The petition's argument is that he must be first warned what to do with this trust, and be advised on where this trust is to be placed. THe petitioner's argument is that he was never advised what to do with the trust. The Fourteenth Amendment to the United States Constitution guarantees the right to due process.

During the state criminal proceedings, Bennett challenged the constitutionality of the statute. This challenge was raised on appeal, both in the Michigan Appeals Court and the Supreme Court of Michigan. Now your Petitioner brings this challenge to the Supreme Court of the United States, the only Constitutional Court to decide the

constitutionality of the Michigan statutes that there is a case of controversy on the law.

That after the petitioner researched the MSA, there was no record of taking this issue before the Supreme Court of the United States for determination of the constitutionality of the MCL 570.151; MSA 26.331.

The State of Michigan said the law does not violate the Fourteenth Amendment to the United States Constitution and the Petitioner said the law is vague and in violation of the Fourteenth Amendment to the United States Constitution.

This court and only this court can decide the constitutionality of the Michigan statute.

Therefore, your petitioner prays that this Article III Court accepts this writ of certiorari to settle the controversy that exists between the petitioner Douglas Dwight Bennett and the State of Michigan.

The second issue is that the petitioner in the State criminal proceeding was charged with being an unlicensed contractor. Your Petitioner brings this issue personally before the court.

As the Petitioner set-forth in his petition, James Faulkner contacted Douglas Bennett to build and addition to his house. Both Bennett and Faulkner agreed to a price and did enter into a contract.

Mr. Faulkner went to the Farmington Hills Building Department and obtained a building permit, and Bennett proceeded with the addition. When it was time to inspect the work that was done, the City of Farmington Hills refused to allow work to continue because Bennett was an unlicensed contractor.

That at the trial and on appeal, Bennett argued that in Reynolds v St. Petersburg, 183 So 304, the court said:

"ordinance no. 873-A enacted by the City of St. Petersburg as aforesaid in unconstitutional because the state itself has no right to require the examination and licensing by a board of persons engaged in a mere trade to writ. The trade or business of general contracting is not even normally concerned with the public health, and the aforesaid ordinance is a mere scheme devised for the aggrandizement of certain classes and has no relation to the public health such as will sustain it as a police or sanitary measure, and that its interferences with the liberty of the citizen and his right to contract." (118 ALR 672).

Argument

That it was Faulkner who wanted a total price on the addition. Faulkner testified (Volume V, page , line) that he, Faulkner, was aware of the fact that Bennett did contract work, and he, Faulkner, was satisfied with the work Bennett did to his house.

The fact is that Faulkner took out the building permit, and that all work performed would be inspected by the Farmington Hills Building Inspector, and would meet or

exceed the building requirements. There was no attempt to build the addition to the Faulkner's house without proper inspection to guarantee the well being of Faulkners.

The State of Michigan said the law does not violate Article I, §10, clause 2 of the United States Constitution. The Petitioner argues that he (Bennett) has the right to contract in legitimate trades, that the City of Farmington Hills Building Department is licensed to act under the police powers to protect, in this case, the Faulkner's health and well being.

Therefore, your Petitioner, Douglas Dwight Bennett, prays that this Article III Court accepts this writ of certiorari to settle the controversy that exists between the Petitioner Douglas Dwight Bennett and the State of Michigan.

to guarantee the well being of Faulkners.

The State of Michigan said the law does not violate Article I, §10, clause 2 of the United States Constitution. The Petitioner argues that he (Bennett) has the right to contract in legitimate trades, that the City of Farmington Hills Building Department is licensed to act under the police powers to protect, in this case, the Faulkner's health and well being.

Therefore, your Petitioner, Douglas Dwight Bennett, prays that this Article III Court accepts this writ of certiorari to settle the controversy that exists between the Petitioner Douglas Dwight Bennett and the State of Michigan.

I

IS M.C.L. 570.152 M.S.A., SECTION 26.332 STATUE UNCONSTITUTIONAL IN VIOLATION OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

Petitioner answers "yes"
Appellees answers "no"
Trial Court answers "no"
Appeal Court answers "no"

1. While the statute sets forth specific activities deemed criminal, which are easily comprehended by someone in the building construction business; was this reasonable and understanding to Mr. Bennett (petitioner) who was never advised of the statute, and she he be held liable? The main basis for Mr. Bennett's objection to the charges is that he was never advised of the statute, and what constitutes a crime.

2. The Defendant, Mr. Bennett, entered into a contract with Mr. Faulkner (Vol. V,

P.57) to build an addition onto his home. Mr. Bennett was given 8,000.00 to start the addition (Vol. V, p.66). When Mr. Faulkner was questioned: (Vol. V, p. 98) "When you gave Mr. Bennett this money, did you advise Mr. Bennett that this money was to go into a separate fund?" Mr. Faulkner responded, "No."; North Am. Vanlines, Inc. v. U.S. 243 F.2d 693. When Mr. Faulkner asked if he knew if this Building Trust Fund when he gave Mr. Bennett this money, Mr. Faulkner's response was no. (Vol. V, pp. 98-99).

3. This type of cross-examination by Mr. Bennett was to establish the facts that Mr. Faulkner never advised Mr. Bennett on what to do with the money, U.S. v. Rosenburg 347 US 1021, and that Mr. Faulkner knew nothing of this Building Trust Fund. This Building Trust Fund is a legislative law, and before Mr. Bennett can be held accountable, he must be fore-warned 12 A.L.R. 3d. 1448 U.S. v. Butler 204 F. Supp. 339.

4. Mr. Faulkner admitted that, due to the fact that Mr. Bennett was not a licensed builder, he could not finish the addition (Vol. V, p.105). As the testimony states, Mr. Bennett prepared the job as far as he could (Vol. V, pp. 102-104), using the money Mr. Faulkner gave to him to pay labor or material men who either worked on the addition or delivered material to the job.

5. In an attempt to resolve the issue of the remaining money, Mr. Bennett submitted to Mr. Faulkner a cost breakdown of the money spent on the addition. Mr. Bennett was willing to pay back to Mr. Faulkner the remaining balance (Vol. V, p. 108). During the trial, Mr. Faulkner gave several conflicting answers when Mr. Faulkner was questioned about the remaining balance. When Mr. Bennett asked Mr. Faulkner, "Did you feel that you were entitled to additional money, other than that amount

Mr. Bennett was willing to return?", Mr. Faulkner's response was "yes", (Vol. V. P. 108). Mr. Faulkner's feelings were that he was entitled to the full 8,000.00 (Vol. V, pp. 113-114).

6. Not knowing of the Building Trust Fund Statutes, Mr. Bennett only did what he thought was reasonable with the money that Mr. Faulkner had given to him to first pay laborers and material that was delivered to the Faulkners. Being an individual, most companies prefer cash, and that is why Mr. Bennett converted the down payment into cash (Vol. V p. 161). The prosecuting attorney fail to prove otherwise. That Mr. Bennett retained the balance in cash and was more than willing to return the balance; only the balance is required to be returned.

7. Referring to the Statute of the Building Trust Fund being a legislative law, the Defendant cannot be held liable

unless first being warned of the law (Vol. VI, pp. 19-20) People v. Purifey 34 Mich. App. 318, 191N.W.2d. 63.

The concept of vagueness or indefiniteness rests on the Constitutional principles that procedural due process requires fair notice and proper standards for adjudication. The primary issue involved is whether the provisions of a penal statute is sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid its penalties and to apprise judge and jury of standards for the determination of guilt. If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its applicability, it is unconstitutional.

8. Crime must be defined with certainty. This is not only a common law requirement, but is now regarded as an element of due process. The underlying principle is that a person ise entitled to be informed as to what the state forbids and should not be required to speculate as to the meaning of a penal legislation. More particularly, a statute which either forbids or requires the doing on an act in terms so vague that

men of common intelligence must guess as to its meaning lacks the first essential of due process of law 12 A.L.R. 3d 1448, U.S. v. National Dairy Products Corp. 372 U.S. 961, U.S. v. Harris 347 U.S. 612m U.S. v. Cardiff 344 U.S. 174, Boyce Motor Lines v. U.S. 342 U.S. 337.

ARGUMENT

Therefore, the Petitioner's theory of law is that the Petitioner was never advised of the law. M.C.L. 570.152 M.S.A., Section 26.332, and the petitioner only acted reasonably in first paying for subcontractors, material men. The Petitioner cannot be held liable.

II

DID THE PROSECUTING ATTORNEY VIOLATE THE DEFENDANT'S 14TH AMENDMENT RIGHTS WHEN CHARGING THE DEFENDANT WITH VIOLATING M.C.L. 339.601, 339.2411 M.S.A. 18.425 (601) 18.425 (2411)?

Petitioner answers "yes"
Respondent answers "no"
Trial Court answers "no"

On the charges of being an unlicensed contractor, did the prosecutor act before the fact. As Mr. Faulkner testified (Vol. V, p. 105), the City of Farmington Hills would not approve the footings. The reason given was that Bennett was an unlicensed contractor. When Mr. Shinavard was examined by Mr. Bennett, he stated that a license was not required for the laying of cement (Vol VI, p. 32). Holding true to a Wyoming law similar to the Michigan law , the requirement that a person be licensed to lay cement was unconstitutional Sampson

v. Sheridan 25 Wyo. 347, 170 p.1. The statute clearly states "The practice of the occupation of residential building, the prosecuting attorney must prove all elements of the crime U.S. v. Sheiner 273 F. Supp. 977. This is clear by the facts that the action by the City of Farmington HIlls was before the fact. All that Mr. Bennett did was prepare the Faulkner's addition for the laying of cement. Mr. Bennett did nothing to alter the Faulkner's home or any type of residential building to the Faulkners. To be charged with a crime, the prosecuting attorney must prove that is what Mr. Bennett did (Vol. V, pp. 98-105).

Peoples exhibit No. 7 on the cost breakdown (Vol V, pp. 90-93) indicates that Bennett used other laborers and material men on the Faulkner's addition. The prosecuting attorney failed to establish that it was Mr. Bennett who was intending to do the building alteration on his own.

Mr. Faulkner was advised by Mr. Bennett that he would sub-contract the work (Vol. IV, p. 16). Intent in a criminal case is an essential element U.S. v. Lester 386 U.S. 938. The prosecutor must establish intent to establish built U.S. v. Byrd 352 F2d 570. The prosecutor failed to establish fact as well as intent regarding the charges of being an unlicensed contractor. The only fact that the prosecuting attorney established was that Mr. Bennett entered into a contract with Mr. Faulkner, a right guaranteed under Article 1 - Section 10 U.S. Code annotated.

ARGUMENT

Citing Alma G. Reynolds vs City of St. Petersburg 183 So. 304; 118 ALR 667.

The Faulkners have a right to hire a friend to do building to their residence. That the Faulkners obtained the Building permit. There was no representation that

the Petitioner (Bennett) was a licensed builder.

That the Faulkners have a right to use ones property as they will is a fundamental constitutional guarantee, I.D. 118 ALR 672.

The power invested in this case is that the building inspection department is to inspect the building, to see that the building conforms to the building codes.

The Petitioner only entered into a contract to build an addition to the Faulkner's residence, Article I - Section 10 U.S. Code Annotated. In this case, the State of Michigan, by and through its police powers, acted without constitutional authority.

The Faulkner's were protected from harm by the building permit, which allowed the City of Farmington Hills Building Department to inspect the addition, and if

the addition passed inspection, the city would grant an occupancy permit, protecting the Faulkner's from injury.

Therefore, the action of the Oakland County Prosecuting Attorney was not justified in charging the Petitioner as being an unlicensed contractor.

III

DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR BY NOT GRANTING THE DEFENDANT'S OBJECTION TO PROSECUTOR'S ENTRY OF EXHIBITS AT TRIAL?

Defendant-Petitioner answers "yes"
Plaintiff-Respondent answers "no"
Trial Court answer "no"
Appeal Court answers "no"

Throughout the trial, Mr. Bennett objected to the Prosecutor's entering the exhibits for the judge and jury to review. The 1st exhibit that the prosecutor attempted to enter was the contract that Mr. Bennett entered into with Mr. Faulkner (Vol. V, p. 58). Mr. Bennett objected, citing the contract was civil. This is a criminal matter (Vol. V, pg. 58). This is a violation of my 4th Amendment Constitutional Right of an illegal search and seizure of private papers People v. Ward 62 Mich App. 46. Mr. Bennett also cited a violation of his 5th Amendment Right, that the contract was acting as

self-incrimination testimony, as for the fourteenth Amendment, the due process clause on the contract.

The second and third exhibit that the prosecutor moved for admission was also objected, citing a violation of 4th, 5th, and 14th Amendment to the United States Constitution (Vol. V, p. 67). Mr. Bennett cited People v. Miller, 78 Mich. App. 336. Miller conviction was obtained by the evidence that the prosecuting attorney submitted to the court, and Miller, failing to timely object, the court denied the objection.

The prosecutor introduced exhibit 4; the court's error at this point in failing to advise Mr. Bennett is their objection (Vol. V, p. 78). At the prosecutor attempted to mis-state the pictures, Mr. Bennett objected (Vol. V, p. 73), and this was overruled by the court.

The 5th proposed exhibit that the

prosecuting attorney presented was a letter that Mr. Faulkner wrote to Mr. Bennett, and an objection was made (Vol. V, p. 79) and the court overruled.

The 6th exhibit was a statement of agreement to either complete the job or return the balance that wasn't used (Vol. V, pp. 84-85), only confirming the fact that Mr. Bennett was willing to return the balance and Mr. Faulkner was satisfied with this arrangement (Vol. V, p. 87).

Regarding the people's own exhibit no. 7, the court ruled (Vol. IV, pp. 33-34) that the prices charged to Mr. Faulkner were reasonable, and that when Mr. Faulkner refused to take the remaining balance, he waived his rights to recover, and this waiver prevented Mr. Faulkner from being charged against Mr. Bennett under the fraudulent detention or use of the Building Trust Fund Statute (Vol. V, pp. 107-114).

During the course of the trial, the

prosecutor continued to submit exhibits and call witnesses to testify. Mr. Bennett objected and the court dismissed and overruled Mr. Bennett's objections.

The witness that caused the most damage to Mr. Bennett getting a fair trial was when the court allowed Audrey Steinhoff to testify. Mr. Bennett objected (Vol. VI, p.4) and also cited People v Sadler. The Michigan Court of Appeals ruled that a prior conviction cannot be used (Vol. VI, p. 5). This was a violation of the Defendant's right to a fair trial.

IV

DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR BY NOT GRANTING DEFENDANT'S MOTION AT-LAW FOR A DIRECTED VERDICT FOR ACQUITTAL?

Defendant-Petitioner answers "yes"
Plaintiff-Respondent answers "no"
Trial Court answers "no"

After the prosecuting attorney called his last witness, Mr. Bennett petitioned the court for a directed verdict At Law for acquittal (Vol. VI, pp. 19-23). This criminal action centers around the contract that Mr. Bennett entered into with Mr. Faulkner to build an addition to the Faulkner's residence.

During the trial, Mr. Faulkner stated that he (Faulkner) approached Mr. Bennett to bid an addition to the Faulkner home. The fact is that Mr. Bennett never advertised to be or represented himself as a licensed builder. Brown v. Glass 167 S.E. 722 and Wahlstrom v. Hill 213 Wis 53.

That contract was a simple form, nothing within the contract suggested that

Mr. Bennett was a licensed builder or that he (Bennett) would obtain a building permit. Petitioner, Bennett, has a right to contract. This issue of the right to use one's property as he wills are constitutional guarantees, but are not immune from regulation or limitation.

His contract is very similar to the description stated in State Exrel. Reynolds v. St. Petersburg 183 So. 304 118 A.L.R. 1st p. 676.

"We recognize that there is a vast difference between the position of an owner who undertakes to construct his own building with labor employed by him for that purpose, and that of the owner who undertakes to construct his building under a contract with a builder as a general contractor, to furnish all labor and material necessary for the construction of the building. In the first instance, the owner relies upon his own knowledge and experience in such matters, while in the latter instance, he must rely upon the knowledge, experience and integrity of the contractor.

When Mr. Faulkner obtained the building permit, he acted as the general

contractor and Mr. Bennett acted as the sub-contractor, to oversee the entire addition. Mr. Bennett advised Mr. Faulkner he would hire other sub-contractors (Vol. IV, p. 16), holding to the language the court used in the Reynolds Case 183 So 304.

As for the Building Trust Fund, Mr. Faulkner never advised Mr. Bennett of this law, and as Mr. Faulkner testified, he did not know of the law. In order for Mr. Bennett to be held accountable, he must first be advised what is criminal and what is not. What Mr. Bennett did, not knowing of the Building Trust Fund, was to first pay labors and material men and retained the balance. Mr. Bennett chose to withhold this in cash.

With respect to the contract between Mr. Bennett and Mr. Faulkner, the City of Farmington Hills order all work to stop. A reasonable agreement was reached at that time; Mr. Bennett would pay back the

balance that hadn't been used in an attempt to justly resolve the credit. With respect to the law M.C.L. Sec. 570.152, M.S.A. Sec. 26.332, all that is required is to return the balance of the Trust Fund, and only refund the balance. Mr. Bennett was in his right to refuse Mr. Faulkner's request that the entire amount of $8,000.00 to be returned (Vol. VI, pp. 19-23).

The second charge, that Mr. Bennett was accused of being an unlicensed building contractor, the prosecuting attorney failed to prove that Mr. Bennett did alter the Faulkner residence. All Mr. Bennett did was prepare the Faulkner's addition for footings and for the laying of cement blocks. In Wilson v. District of Columbia, 26 App. D.C. 110, the court ruled that a contractor's license was not required. The prosecuting attorney failed to prove that most of Mr. Bennett's income was from being an unlicensed contractor State v. McNally

12 So. 117.

That Mr. Bennett was not required to renew his Motion for a Directed Verdict after calling his witnesses, John T. Waid and Ernest Shinavard. All that was given was testimony Pritchett v. U.S. 185 F.2d 438, Hall v. U.S. 335 US 839, Hiatt v. US, 390 US 998.

The facts presented by the prosecuting attorney were not adequate to support the charges McKenzie v. U.S. 266 F.2d 524. Throughout the trial, Mr. Bennett cited his 5th Amendment was being violated Diaz v. US 391 F.2d 932.

Therefore, by the fore-mentioned reason, the trial judge erred by not allowing Mr. Bennett his Motion for Acquittal Pritchett v. US 341 US 905, and therefore, the Motion for Directed Verdict should have been granted.

V

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY NOT ADEQUATELY INSTRUCTING THE JURY CONCERNING THE APPLICABLE LAW?

Defendant-Petitioner answers "yes'
Plaintiff-Respondent answers "no"
Trial Court answers "no"

The trial court, during the instruction phase of the trial, relied very heavily on the Michigan standard jury instruction when charging the jury. The court compounded its error further when it refused to explain the elements of the fraudulent detention or use of the Building Trust Fund, and the second charge of being an unlicensed contractor. The court felt that the meaning of this statute, although unclear, was discernible from the facts brought out at trial. The court placed too great a burden on the shoulders of the jury, expecting too much from their decision-making capacity.

The offered instructions were based upon theories and defenses raised during

trial. The Michigan Court of Appeals in Rone, Supra 711 quoted from the Michigan Supreme Court stating:

In People v. Reed, 383 Michigan 342, 349-350 224 N.W. 867.

> The Supreme Court summarized the duties of a trial court to properly instruct its jury. If supported by the evidence, a trial judge must include instructions or any theories or defenses raised.

The trial court erred by not advising the law M.C.L. 570.152, M.S.A. states that only the money be retained to first pay laborers and material men and retain the balance. That Mr. Bennett was only required to refund the balance, not the entire $8,000.00. The prosecuting attorney must prove that Mr. Bennett failed to return the balance and that he used the balance for other projects. The prosecuting attorney must prove that the Faulkners were denied this balance of $4,400.00 by Mr. Bennett. That all Mr.

Bennett was required to refund was the balance not the entire $8,000.00.

The second charge of being an unlicensed residential contractor M.C.L. 339.601, 339.2411, M.S.A. 18.425, (601) 18.425 2411) requires that the prosecuting attorney prove Mr. Bennett did alter or do residential maintenance to the Faulkner's residence, and that is what Mr. Bennett does for a living.

Therefore, by the forementioned the trial judge did err in the instruction of the law to the jury.

VI
DID THE TRIAL COURT INFLICT A HARSH AND CRUEL PUNISHMENT WHEN THE DEFENDANT WAS SENTENCED?

Defendant-Petitioner answers "yes"
Plaintiff-Respondent answers "no"
Trial Court answers "no'

On the 27th of July, 1989, Mr. Bennett was sentenced by the court to pay $100.00 in fines, $1,000.00 in cost and $8,671.00 in restitution. Mr. Bennett only challenges the sentencing of the count in part as harsh, cruel and in violation of his constitutional right to due-process.

The 8th Amendment to the United States Constitution guarantees to a defendant that the court has no right to inflict excessive bail, fines, or punishments. During the preliminary examination (Vol. VI) the court ruled that Mr. Bennett was to be bound over to the circuit court on the fraudulent detention or use of the Building Contract Trust Fund (Vol. IV, pp. 23-35). The court stated that at least $4,000 should have been returned to the Faulkners ($4,400.00 to be exact), and that was the amount that

Mr. Bennett was bound over to circuit court on.

The second issue is: Did the trial court have the authority to require Mr. Bennett to pay restitution in a state criminal act ion.

Under the 14th Amendment, Mr. Bennett is guaranteed to due-process in a criminal action Quigg v. Crist 449 U.S.922. The court must meet four essential elements (1) person must have recognized liberty or property interest at stake, (2) Every temporary deprivation of that liberty or property will satisfy required element of due-process clause, (3) There must be some form of state action, which deprives individual of his liberty or property, and (4) There must be some legitimate government or public reason asserted for depriving individual of his liberty or property Craig v. Carson 449 F. Supp. 385.

That under the Federal Rules of

Criminal Procedure, Title 18, Section 242, when a conviction is obtained, only fines and costs are part of the judgement of the court. Recovery of damages is by a civil action. Brown v. Duggan 329 F. Supp. 207, Spotted Eagle v. Blackfeet Tribe of Black Feet Indian Reservation 55 F.R.D. 550. U.S. v. City of Philadelphia 644 F.2d 962.

That if the Federal Courts are forbidden to impose civil damages within a criminal case, then the duty of the state court have the same obligation to enforce constitutional rights. Scott v. Frey 330 F. Supp. 365, People v. Billingsley 20 Mich. App. 10. The trial judge in sentencing Mr. Bennett executed the will of the judge and not the will of the law People v. Bruner 175 N.E. 400.

The trial judge, when sentencing Mr. Bennett, gave no consideration towards the evaluation of the probation department (Vol. VII, p.8), which only recommended

probation, meaning that after all was considered by the probation department. The department felt that Mr. Bennett wasn't a threat to society by only recommending probation. The trial judge in sentencing Mr. Bennett gave no consideration to the probation department's report.

PRAYER FOR RELIEF

WHEREFORE, your Petitioner-Defendant Douglas Dwight Bennett prays that this Article III Court find the following:

A. That M.C.A., Section 570.152, M.S.A., Section 26.332, Fraudulent Detention of Use of Building Trust Fund Statute , is unconstitutional and in violation of Petitioner's Fourteenth Amendment to the United States Constitutional. That the Petitioner was

never advised of the statute and therefore should not be held liable for violation of the statute. The Petitioner only did what men of common knowledge would do with the Trust; first pay labor, then material men.

B. That the Petitioner was wrongfully charged for violation of M.C.L. 339.601, 339.2411, M.S.A. 18.425 (601) 18.425 (2411), that the petitioner has a right to make contracts under Article I, Section 10, clause 2, and to work at a legitimate trade.

C. That the trial court failed to dismiss the exhibits submitted by the prosecution. That the exhibits presented violated the Defendant-Petitioner's 5th, 6th and 14th Amendment Rights to the United States Constitution.

D. That the trial court erred by not granting the Defendant-Petitioner's Motion at-law for a directed verdict for an acquittal.

E. That the trial court failed to adequately instruct the jury.

F. That the trial court inflicted a harsh and cruel punishment in violation of the 8th Amendment to the United States Constitution, and reverse the decision of the trial court.

May 31 1992
Date

Douglas Dwight Bennett
1426 Appleford
Walled Lake, MI 48390
(313) 624-5418

VII
DID THE DEFENDANT DOUGLAS DWIGHT BENNETT RECEIVE A FAIR TRIAL?

As your petitioner has stated just for raising his constitutional right he, Bennett, was threatened with a forensic examination, Vol. II, page 3 , and was ejected from the court, a clear violation of Title 18, USC §1512, tampering with a witness or victim or an informant.

A. Whoever knowingly uses intimidation or physical force or threatens another person or attempts to do or engages in misleading conduct to ward another person with intent to:

B. cause or induce any person to:

a. alter, destroy, mutilate or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding

shall be fined not more than $250,000.00 or imprisoned not more than ten years or both.

Argument

The actions of Margaret Schaeffer and Robert Hedges as set forth in Vol. II page 2 can only be described as persons, and that the moving force behind their action could only be said to be personal, and that Margaret Schaeffer and Robert Hedges should not be allowed to hide behind the eleventh Amendment to the United States Constitution. The actions of both Schaeffer and Hedges is in direct violation of their oath of office, and violates both the Michigan and United States Constitutions, and the guarantees of the Sixth Amendment.

Therefore, your Petitioner petitions this court in view of Warth v Seldin, 422 US 490; 95 S.ct. 2197, to act on this court's motion to have the United States Justice Department investigate the allegations of Douglas Dwight Bennett, the

Petitioner, to bring the wrongdoers to justice to protect the rights of the Petitioner.

During the state criminal proceeding that Bennett was the Defendant on cross-examination of Mr. Faulkner by Mr. Bennett, Faulkner was questioned: "You've indicated to the court that work was stopped; could you tell the court why and who you were ordered by to have this work stopped?" (referring to the work that Bennett was doing to the Faulkner house) He **answered** I'm not aware that we were ordered to stop work (Vol. V, page 23). Mr. Bennett **questioned:** "Did not the City of Farmington Hills by and through the Building Inspector, John T. Waid, notify you to cease all work." Mr. Faulkner **answered:** "I'm not aware." Mr. Bennett **questioned:** "You're not aware of that?" Mr. Faulkner **answered:** "I'm not aware that we were ordered to stop. You're the one who stopped. Mr. Bennett **questioned:** "Did the

building department ever notify you to cease operations?" Mr. Faulkner answered: "I am not aware of the building department notifying me." (Vol. V, page 24).

That within the appellees', L. Brooks Patterson and John Nichols, brief on appeal to the Sixth Circuit Court of Appeals, no. 88-1761, the appellees stated that "shortly after Plaintiff began work on the addition, the Faulkners, allegedly acting under the instruction of a Farmington Hills city employee, John T. Waid, refused to allow Plaintiff to finish construction on the addition." (Appendix D).

This is proof that the Faulkners were advised that the City of Farmington Hills advised them to stop all work on the addition.

The statement made by James Faulkner falls with the provisions of Title 18 USC §1621 Perjury Generally.

1. Having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be a administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true.

Argument

The facts that your Petitioner has set-forth is that James Faulkner perjured himself several times only to portray to the jury that Bennett was nothing more than a common thief, which is far from the truth.

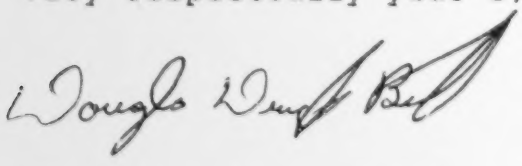
It must be asked of this Article III

Court to review the facts and reach the conclusion that Bennett, in the state criminal proceeding, did not receive a fair trial, and on this Court's own motion to petition the United States Justice Department to intervene within the proceeding to protect this individual citizen's constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Douglas Dwight Bennett, prays that this Article III Court grant this writ of certiorari, so that equal justice will be served.

Very respectfully your's,



Douglas Dwight Bennett